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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91204296
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
THE TRADEMARK TRIAL AND APPEAL BOARD

JJI INTERNATIONAL, INC.	:	
Opposer,	:	Appl. Ser. No.: 85356064
v.	:	Opposition No.: 91204296
SPARKLE LIFE, LLC	:	
Applicant.	:	

OPPOSER JJI INTERNATIONAL, INC.'S MAIN TRIAL BRIEF

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I. PRELIMINARY STATEMENT

Opposer, JJI International, Inc. (“Opposer”), is the owner of the federal trademark registration for SPLASHES & SPARKLES® in connection with jewelry. Opposer’s registration is incontestable.

A consumer survey expert has determined that there is a significant likelihood of confusion between the SPLASHES & SPARKLES® mark and Sparkle Life, LLC’s (“Applicant”) junior mark, SPARKLE LIFE. Moreover, the evidence of record demonstrates that because (1) the parties’ marks are confusingly similar in appearance, sound, meaning and commercial impression (the first *DuPont* factor); (2) the parties’ goods are legally identical (the second *DuPont* factor); (3) the parties sell and offer for sale their goods through identical channels of trade and to identical potential customers (the third *DuPont* factor); (4) the parties’ goods are relatively inexpensive items purchased by ordinary consumers (the fourth *DuPont* factor); and (5) Opposer’s SPLASHES & SPARKLES® mark is strong (the fifth and sixth *DuPont* factors), registration of Applicant’s mark, SPARKLE LIFE, in connection with jewelry would create a likelihood of confusion with Opposer’s SPLASHES & SPARKLES® mark and would allow Applicant to palm off of the considerable and valuable goodwill that Opposer has built up in its SPLASHES & SPARKLES® mark, each to Opposer’s detriment.

Applicant has presented scant evidence to rebut Opposer’s claims, and as such, Opposer should prevail in this proceeding on its claim of likelihood of confusion under 15 U.S.C. § 1052(d). Accordingly, the Board should deny registration of U.S. Trademark Application No. 85356064 and sustain Opposer’s opposition to the application under Section 2(d) of the Trademark Act.

II. DESCRIPTION OF THE RECORD

Pursuant to Rule 2.128(b) of the Trademark Rules of Practice, 37 CFR § 2.128(b) and TBMP § 801.03, Opposer provides the following description of the record:

A. Evidence Automatically of Record

By rule, the record includes Applicant's application for the mark, SPARKLE LIFE, Serial No. 85356064, and the pleadings. Trademark Rule 2.122(b); 37 CFR § 2.122(b).

B. Opposer's Evidence

Opposer's record in this case consists of the following:

1. Opposer's Notice of Reliance Re: Opposer's Trademark Registration and Use filed January 13, 2014 as Docket No. 27¹, consisting of: (i) Opposer's trademark registration for its SPLASHES & SPARKLES® trademark (attached as Exhibit 1); (ii) the TSDR record for SPLASHES & SPARKLES® (attached as Exhibit 2); and (iii) the complete registration file history for SPLASHES & SPARKLES® (attached as Exhibit 3);
2. Opposer's Notice of Reliance Re: Official Records filed January 13, 2014 as Docket No. 28, consisting of: (i) Office Action dated March 1, 2011, The Bazar Group, U.S. Trademark Application No. 85180816 – SPARKLE (attached as Exhibit 1); (ii) Request for Express Abandonment dated April 6, 2011, The Bazar Group, U.S. Trademark Application No. 85180816 – SPARKLE (attached as Exhibit 2); and (iii) Notice of Abandonment dated April 7, 2011, The Bazar Group, U.S. Trademark Application No. 85180816 – SPARKLE (attached as Exhibit 3);
3. Opposer's Notice of Reliance Re: Produced Evidence filed January 13, 2014 as Docket No. 29, consisting of: (i) portions of Applicant's SPARKLE LIFE catalog and printout of

¹ All docket entry citations refer to the Board's TTABVUE electronic docket information and file database.

a third-party website evidencing use of the SPARKLE LIFE mark on jewelry (attached as Exhibit 1);

4. Opposer's Notice of Reliance Re: Written Discovery Responses and Produced Documents filed January 13, 2014 as Docket No. 30, consisting of: (i) Applicant's Responses to Opposer's First Set of Interrogatories (attached as Exhibit 1); and (ii) Applicant's Responses to Opposer's First Request for Production of Documents (attached as Exhibit 2);

5. Testimony declaration of Dr. Geoffrey T. Fong, Ph.D. ("Fong Dec."), filed January 13, 2014 as Docket No. 31, along with the Expert Report of Dr. Geoffrey T. Fong, Ph.D. ("Fong Report") attached thereto as Exhibit 1; and

6. Testimony declaration of Opposer's Chief Executive Officer, Dale Kincaid ("Kincaid Dec."), filed January 13, 2014 as Docket No. 33, along with (i) portions of Opposer's catalogs and other promotional materials for Opposer's SPLASHES & SPARKLES® products for the years 2006 to 2013 (attached as Exhibit 1); and (ii) photographs taken at the 2013 Atlanta International Gift Market of advertising for Applicant's products bearing the SPARKLE LIFE mark (attached as Exhibit 2).

C. Applicant's Evidence

Applicant's record in this case consists of the following:

1. Applicant's First Notice of Reliance filed March 14, 2014 as Docket No. 34, consisting of "[p]rintouts of websites having descriptive and/or trademark use of the term SPARKLE in conjunction with jewelry" (Exhibits A1 to A40); and

2. Applicant's Second Notice of Reliance filed March 14, 2014 as Docket No. 35, consisting of "[p]rintouts of Third-Party Registrations containing the term SPARKLE or SPLASH in conjunction with jewelry" (Exhibits B1 to B19).

III. STATEMENT OF THE ISSUES

Whether there exists a likelihood of confusion between Opposer's SPLASHES & SPARKLES® mark and Applicant's SPARKLE LIFE mark under 15 U.S.C. § 1052(d).

IV. STATEMENT OF FACTS

A. Opposer's Business and the SPLASHES & SPARKLES® Trademark

Formed in 1989, Opposer designs, sources and/or manufactures a wide variety of jewelry, decor, gifts and accessories. (Kincaid Dec., ¶ 6.) Opposer markets, sells and has sold products bearing well-known brands, such as MOVADO® (watches), KINCAID® (clocks) and SPLASHES & SPARKLES® (jewelry) in the United States. (*Id.*, ¶ 7.) In or about September, 2004, Opposer adopted the SPLASHES & SPARKLES® mark and has been using it in commerce continuously since then in connection with the marketing and sale of jewelry products. (*Id.*, ¶ 8.) Opposer's President, Lisa Weingeroff, coined the SPLASHES & SPARKLES® mark after being inspired by an article written about her sister-in-law. (*Id.*, ¶ 9.) When Opposer adopted the SPLASHES & SPARKLES® mark, it intended to develop a lifestyle brand that encompassed other categories besides jewelry, but over time it became evident that the focus should be jewelry because of the great acceptance of the brand in the marketplace. (*Id.*, ¶ 10.)

To protect the substantial goodwill associated with its line of jewelry products branded with the trademark, SPLASHES & SPARKLES®, Opposer applied for a federal trademark registration. (*Id.*, ¶ 11.) On October 11, 2005, the United States Patent and Trademark Office ("PTO") granted Opposer a federal trademark registration for the mark, SPLASHES & SPARKLES® (Reg. No. 3,005,830), in connection with jewelry, International Class 14. (*Id.*, ¶ 12; *see also* Docket No 27, Exhibit 2.) Opposer has not changed the nature of its jewelry products sold under the SPLASHES & SPARKLES® mark from 2004 to the present. (Kincaid

Dec., ¶ 13.) Opposer sells and has sold its SPLASHES & SPARKLES® jewelry products in retail channels of trade. (Id., ¶¶ 18, 20, 22.) The SPLASHES & SPARKLES® trademark registration is valid and subsisting. (Id., ¶ 14; *see also* Docket No 27, Exhibit 2.) It is incontestable under 15 U.S.C. § 1065. (Docket No 27, Exhibit 2 and Exhibit 3.)

B. Opposer's Continuing and Uninterrupted Use of Its SPLASHES & SPARKLES® Trademark

Opposer has continuously sold jewelry products under the SPLASHES & SPARKLES® mark in United States commerce from 2004 to the present. (Kincaid Dec., ¶ 16.) Opposer's sales of its jewelry products under the SPLASHES & SPARKLES® mark have been substantial and have resulted in significant sales revenues. (Id.) Over the past five years, Opposer sold approximately \$6,500,000.00 of its SPLASHES & SPARKLES® branded jewelry products (\$1,300,000.00 annual average). (Id.) Opposer continues to offer and sell its SPLASHES & SPARKLES® branded jewelry products in commerce and sales of the SPLASHES & SPARKLES® branded jewelry products remain significant. (Id.)

During its long, widespread and continuous use of the SPLASHES & SPARKLES® mark, Opposer has invested heavily in advertising and promoting its SPLASHES & SPARKLES® branded jewelry products. (Id., ¶ 17.) Over the past five years, Opposer incurred advertising expenses associated with products bearing the SPLASHES & SPARKLES® mark of approximately \$530,000.00 (\$106,000.00 annual average). (Id.)

Since launching its SPLASHES & SPARKLES® branded products in 2004, Opposer has advertised and promoted its SPLASHES & SPARKLES® branded products in the following media: promotion to retail consumers through Opposer's website; print advertising in and distribution of press releases and product samples to magazines, trade journals and trade publications; distribution of catalogs, brochures and promotional materials to retail consumers;

and product displays at retail locations and at large industry trade shows. (Id., ¶ 18.) In addition, Opposer uses sales support and independent sales representatives to sell its SPLASHES & SPARKLES® branded products; Opposer has over 100 such independent sales representatives. (Id.)

Among others, Opposer attends annually trade shows in Atlanta, Dallas, California, Ohio, New York, Philadelphia, Chicago and Boston. (Id., ¶ 19.) Opposer advertises its SPLASHES & SPARKLES® branded products in its exhibitor spaces and in trade publications distributed at these trade shows. (Id.)

Through its promotion and advertising and the quality of products associated with the SPLASHES & SPARKLES® mark, the SPLASHES & SPARKLES® mark has become established in the retail market and Opposer has developed considerable goodwill in the mark. (Id., ¶ 20.) Opposer's customers associate the SPLASHES & SPARKLES® brand with Opposer's line of quality jewelry products. (Id.) Accordingly, the SPLASHES & SPARKLES® mark is an extremely valuable commercial asset. (Id.) Opposer continues to expended significant advertising expenses to promote its SPLASHES & SPARKLES® branded jewelry products to this day. (Id., ¶ 21.)

C. Applicant's Application for the SPARKLE LIFE Mark

Notwithstanding Opposer's longstanding rights in and to the SPLASHES & SPARKLES® mark, on or about June 24, 2011, Applicant filed the subject application to register the designation, SPARKLE LIFE, for use in connection with "bracelets; charms; costume jewelry; necklaces; precious and semi-precious crystal stones and beads for use in jewelry" in International Class 14, claiming the mark was first used in commerce at least as early as July 1, 2010. (Kincaid Dec., ¶ 15; *see also* Applicant's application filed June 24, 2011.)

Applicant's application seeks registration of the mark in standard character format, and contains no limitation as to the nature, type, channels of trade or class of purchasers of the SPARKLE LIFE products. (Applicant's application filed June 24, 2011.)

D. Overlapping Channels of Trade and Distribution Channels for Opposer's Jewelry Products Sold Under the SPLASHES & SPARKLES® Mark and Applicant's Jewelry Products Sold Under the SPARKLE LIFE Mark

Commencing in 2004, Opposer has sold its SPLASHES & SPARKLES® branded products in retail channels and to wholesale accounts through which the products are distributed to retail consumers. (*Id.*, ¶ 22.) The types of accounts to which Opposer sells its SPLASHES & SPARKLES® branded products include gift stores, small chain stores, hospital gift shops and major retailers across the United States. (*Id.*)

Applicant markets and/or promotes its jewelry products under the SPARKLE LIFE mark in the same or similar channels across the United States, i.e., trade shows, consumer catalogs, trade publications and company catalogs. (*Id.*, ¶ 23; *see also* Docket No 30, Exhibit 1 at Nos. 10 and 11.) For example, Applicant attended at least the 2012 Atlanta International Gift & Home Furnishing Market trade show, which Opposer also attended, marketed and offered for sale its SPLASHES & SPARKLES® products. (Kincaid Dec, ¶ 23; *see also* Docket No 30, Exhibit 2 at Exhibit 12.) Moreover, Applicant attended, promoted and offered for sale its jewelry products bearing the SPARKLE LIFE mark at the 2013 Atlanta International Gift & Home Furnishing Market trade show, which Opposer also attended, promoted and offered for sale its SPLASHES & SPARKLES® jewelry products. (Kincaid Dec., ¶ 24.) In fact, Applicant's exhibitor space at the 2013 Atlanta Gift Market was on the same floor as Opposer's exhibitor space. (*Id.*) As a result, Applicant promoted and offered for sale its SPARKLE LIFE jewelry products to the same customers as Opposer promoted and offered for sale its SPLASHES & SPARKLES® jewelry

products. (Id.) Additionally, Applicant's advertising from the 2013 Atlanta Gift Market states "As Featured in GIFTBEAT." (Id.) Many gift stores to which Opposer promotes and sells its SPLASHES & SPARKLES® jewelry products subscribe to this publication. (Id.)

Applicant markets and sells its jewelry products under the SPARKLE LIFE mark to the same or similar customer class as Opposer, and the parties' products are sold for similar, relatively inexpensive prices. (Id., ¶ 25 and Exhibit 1; *see also* Docket No 30, Exhibit 1 at Nos. 12 and 14 and Exhibit 2 at Exhibits 1 and 11.) Applicant refused to produce in discovery a customer list or disclose the identities of customers to whom it markets and sells products bearing the SPARKLE LIFE mark. (Kincaid Dec., ¶ 25; *see also* Docket No 30, Exhibit 1 at No. 14.) As a result, Opposer was unable to determine the extent to which Applicant markets and sells its products under the SPARKLE LIFE mark to the same customer accounts as those whom Opposer markets and sells its jewelry products under the SPLASHES & SPARKLES® mark. (Kincaid Dec., ¶ 25.) However, as described above, Applicant has promoted and offered for sale its jewelry products under the SPARKLE LIFE mark in the same channels of trade, to the same class of customers and at the same trade shows where Opposer promoted and offered for sale its jewelry products under the SPLASHES & SPARKLES® mark. (Id.)

E. Opposer Enforces Its Rights in the SPLASHES & SPARKLES® Mark

Opposer enforces its trademark rights in the SPLASHES & SPARKLES® mark. (Id., ¶ 26.) For example, on November 19, 2010, The Bazar Group, Inc. ("Bazar"), a jewelry manufacturer and seller, filed federal trademark Application No. 85180816 to register the mark, SPARKLE, for "jewelry" in the PTO. (Id., ¶ 27; *see also* Docket No 28, Exhibit 1.)

In January 2011, Opposer notified Bazar that its use of the mark, SPARKLE, in connection with jewelry, infringed Opposer's federally-registered SPLASHES & SPARKLES® mark. (Kincaid Dec., ¶ 28.) On or around April 7, 2011, Bazar expressly abandoned its

application to the PTO for the SPARKLE mark. (*Id.*, ¶ 29; *see also* Docket No 28, Exhibit 1 and Exhibit 2.) However, Bazar did not cease its use of the mark, SPARKLE, in connection with jewelry. (Kincaid Dec., ¶ 29.) In May 2011, Opposer initiated litigation in the federal district for the District of Rhode Island (JJI International, Inc. v. The Bazar Group, Inc. C.A. No. 11-206-ML), alleging that Bazar’s unauthorized use of the mark, SPARKLE, amounts to trademark infringement. (*Id.*, ¶ 30.) In November 2013, Opposer and Bazar entered into a confidential settlement agreement resolving the litigation. (*Id.*, ¶ 31.)

V. OPPOSER’S LIKLIHOOD OF CONFUSION SURVEY

For purposes of this proceeding, Opposer retained Dr. Geoffrey T. Fong, Ph.D. (“Dr. Fong”), to provide expert testimony concerning the likelihood of confusion between Opposer’s SPLASHES & SPARKLES® mark and Applicant’s SPARKLE LIFE mark. (Fong Dec., ¶ 3.) Dr. Fong is a Professor of Psychology at the University of Waterloo, Canada. (*Id.*, ¶ 1.) His experience includes designing and implementing a wide variety of surveys—such as face-to-face surveys, mall intercept surveys and web-based surveys—across a broad range of populations throughout the United States and the world. (*Id.*, ¶ 2.) Dr. Fong applies his 30 years of experience as an academic, a researcher and as a social psychologist to the design and implementation of trademark surveys, including likelihood of confusion, secondary meaning and genericness surveys. (*Id.*)

On January 3, 2013, Dr. Fong issued an expert report. (*Id.* at ¶ 4; Fong Report.) As detailed in his report, and as discussed more fully below, after conducting a trademark likelihood of confusion survey that he designed, Dr. Fong concluded that there is a likelihood of consumer confusion between Opposer’s federally registered trademark, SPLASHES & SPARKLES®, and Applicant’s junior mark, SPARKLE LIFE. (Fong Dec., ¶ 5; Fong Report at 4, 19.) Specifically,

Dr. Fong concluded that there exists a statistically significant rate of likelihood of consumer confusion of 16.5 % between the SPLASHES & SPARKLES® and SPARKLE LIFE brands of jewelry products. (Fong Report at 15, 19.)

VI. ARGUMENT

A. Opposer Has Standing and Priority

Opposer's standing and priority are undisputed. Opposer's standing to oppose registration of Applicant's mark is established by its pleaded Registration No. 3005830 for SPLASHES & SPARKLES®, which the record shows to be valid and subsisting, and owned by Opposer. *See Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1844 (Fed. Cir. 2000) (party's ownership of pleaded registration establishes standing).

In addition, because Opposer's pleaded registration is of record, priority is not an issue with respect to the goods covered by the registration. *King Candy Co. v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ 108, 110 (CCPA 1974); *see also Ultratan Suntanning Ctrs., Inc. v. Ultra Tan Int 'lAB*, 49 U.S.P.Q.2d 1313, 1315 (TTAB 1998) (“[P]rior use need not be shown by an opposer relying on a registration of its pleaded mark for its pleaded goods or services unless the applicant counterclaims for cancellation”). Moreover, it is undisputed that Opposer began using the SPLASHES & SPARKLES® mark on September 20, 2004, long prior to Applicant's June 24, 2011 application filing date and claimed July 1, 2010 date of first use in commerce.

B. The Relevant *DuPont* Factors Demonstrate That Confusion is Likely

The likelihood of confusion determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors set forth in *In re E. I. DuPont*

de Nemours and Co., 476 F.2d 1357 (CCPA 1973).² To prevail in this opposition, Opposer is not required to prove that all, or even most, of these factors favor a likelihood of confusion. *See id.* at 1362; *In re Mighty Leaf Tea*, 601 F.3d 1342, 1346 (Fed. Cir. 2010) (“Not all of the *DuPont* factors are relevant to every case, and only factors of significance to the particular mark need be considered.”) (citation omitted). However, each of the factors for which evidence has been made of record weighs in favor of Opposer and a finding of likelihood of confusion.

1. The Parties’ Marks Are Confusingly Similar

The similarity of the marks is determined by focusing on “the marks in their entirety as to appearance, sound, connotation, and commercial impression.” *Palm Bay Imps. Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 1371 (Fed. Cir. 2005) (quoting *DuPont*, 476 F.2d at 1361). In a particular case, any one of these means of comparison may be critical in finding the marks to be similar. *Citigroup, Inc. v. Capital City Bank Grp., Inc.*, 94 U.S.P.Q.2d 1645, 1668 (TTAB 2010) (citations omitted). “In general, the greater the similarity between two marks at issue, the greater the likelihood of confusion.” *Nautilus Group, Inc. v. ICON Health & Fitness, Inc.*, 372 F.3d 1330, 1344 (Fed. Cir. 2004) (citation omitted).

In comparing the marks, the test is not whether the marks can be distinguished when subjected to a side-by-side comparison, but rather whether they are sufficiently similar in terms of their overall commercial impression so that confusion as to the source of the goods offered

² Those factors are: (1) The similarity or dissimilarity of the marks in their entirety as to appearance, sound, connotation, and commercial impression; (2) The similarity or dissimilarity and nature of the goods ... described in an application or registration or in connection with which a prior mark is in use; (3) The similarity or dissimilarity of established, likely-to-continue trade channels; (4) The conditions under which and buyers to whom sales are made, i.e. “impulse” v. careful, sophisticated purchasing; (5) The fame of the prior mark....; (6) The number and nature of similar marks in use on similar goods; (7) The nature and extent of any actual confusion; (8) The length of time during and the conditions under which there has been concurrent use without evidence of actual confusion; (9) The variety of goods on which a mark is or is not used....; (10) The market interface between the applicant and the owner of a prior mark....; (11) The extent to which applicant has a right to exclude others from use of its mark on its goods; (12) The extent of potential confusion....; (13) Any other established fact probative of the effect of use.

Id., 476 F.2d at 1361.

under the respective marks is likely to result. *San Fernando Elec. Mfg. Co. v. JFD Elecs. Components Corp.*, 565 F.2d 683, 196 USPQ 1, 3 (CCPA 1977); *Spoons Rests. Inc. v. Morrison Inc.*, 23 USPQ2d 1735, 1741 (TTAB 1991), *aff'd*, No. 92-1086 (Fed. Cir. June 5, 1992). The proper focus is on the recollection of the average customer, who retains a general impression of the marks. *Winnebago Indus., Inc. v. Oliver & Winston, Inc.*, 207 USPQ 335, 344 (TTAB 1980).

Because the similarity or dissimilarity of the marks is determined based on the marks in their entireties, the Board's analysis cannot be predicated on dissecting the marks into their various components; that is, the decision must be based on the entire marks, not just part of the marks. *In re Nat'l Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985); *see also Franklin Mint Corp. v. Master Mfg. Co.*, 667 F.2d 1005, 212 USPQ 233, 234 (CCPA 1981) ("It is axiomatic that a mark should not be dissected and considered piecemeal; rather, it must be considered as a whole in determining likelihood of confusion."). On the other hand, different features may be analyzed to determine whether the marks are similar. *Price Candy Co. v. Gold Medal Candy Corp.*, 220 F.2d 759, 105 USPQ 266, 268 (CCPA 1955). In fact, "there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, provided the ultimate conclusion rests on a consideration of the marks in their entireties." *In re Nat'l Data Corp.*, 224 USPQ at 751. Additionally, "[w]hen marks would appear on virtually identical goods or services, the degree of similarity necessary to support a conclusion of likely confusion declines." *Century 21 Real Estate Corp. v. Century Life of America*, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992); *see also Jansen Enters. Inc. v. Rind*, 85 USPQ2d 1104, 1108 (TTAB 2007).

Comparing the parties' marks first in terms of appearance, they look similar to the extent that they have a similar format, structure and syntax. Both contain two words and share the term

SPARKLE, which constitutes the dominant part of each mark. *In re Nat'l Data Corp.*, 224 USPQ at 751. The plural form of the term, SPARKLE, in Opposer's mark does not change the effect of the term. *Wilson v. Delaunay*, 245 F.2d 877, 114 USPQ 339, 342 (CCPA 1957) ("There is no material difference in the trademark sense between the singular and plural form of the word 'Zombie' and they will therefore be regarded as the same mark"). Nor does the inclusion of an ampersand in Opposer's mark materially differentiate the marks in terms of appearance. *See Hillyard Enterprises, Inc. v. Indus. Steam Cleaning, Inc.*, Opp. No. 91170650, 2008 WL 1741922 (TTAB 2008) ("Marks may be confusingly similar in appearance, sound, meaning and commercial impression despite the addition, deletion or substitution of letters or words, or the addition or deletion of spaces between words.")

Additionally, the first words in each mark, SPARKLE and SPLASHES, look similar to the extent they include the same first two letters and are nearly identical in length—seven and eight letter words respectively. Moreover, the fact that Applicant seeks registration of its mark in standard character format, as is Opposer's registered mark, means that neither party is limited to any particular manner of display. *See Phillips Petroleum Co. v. C. J. Webb, Inc.* 442 F.2d 1376, 170 USPQ 35, 36 (CCPA 1971) (When a word mark is registered in typed form, the Board must consider all reasonable modes of display that could be represented.). Thus, both parties could display their marks in similar lettering. The similarities in appearance overshadow any differences.

In terms of sound, both marks have the same first two letters, contain an initial sibilant sound, and share the word SPARKLE, which creates "considerable phonetic similarity." *Den-Mat Corp. v. Block Drug Co., Inc.*, 895 F.2d 1421 (Fed. Cir. 1990); *see also Beer Nuts, Inc. v. Clover Club Foods Co.*, 805 F.2d 920, 926 (10th Cir. 1986).

Regarding connotation or commercial meaning, since both parties' goods include jewelry, the marks convey the same connotation and meaning to the average purchaser of the parties' goods. *See e.g., In Re M. Serman & Co., Inc.*, 223 USPQ (TTAB 1984) (CITY WOMAN held likely to be confused with CITY GIRL, both for clothing); *Watercare Corp. v. Midwesco-Enterprise, Inc.*, 171 USPQ 696 (TTAB 1971) (AQUA-CARE (stylized) held likely to be confused with WATERCARE (stylized), both for water conditioning products). In fact, the survey results Opposer has placed into the record (discussed below) demonstrate that the parties' marks are considered similar by prospective consumers, and that any differences in the marks do not serve to alleviate confusion.

Accordingly, the similarity of the parties' marks weighs in favor of a likelihood of confusion.

2. The Parties' Goods are Identical

It is well settled that the question of likelihood of confusion must be determined based on an analysis of the goods as they are identified in the respective descriptions of services. *See American Lebanese Syrian Associated Charities Inc. v. Child Health Research Institute*, 101 USPQ2d 1022, 1028 (TTAB 2011); *In re Shell Oil Co.*, 992 F.2d 1204, 26 USPQ2d 1687, 1690 n.4 (Fed. Cir. 1993). Likelihood of confusion may be found based on any item that comes within the identification of goods in the involved application or registration. *Tuxedo Monopoly, Inc. v. General Mills Fun Group*, 648 F.2d 1335, 209 USPQ 986, 988 (CCPA 1981).

If the cited registration describes goods or services broadly, and there is no limitation as to the nature, type, channels of trade or class of purchasers, it is presumed that the registration encompasses all goods or services of the type described, that they move in all normal channels of trade, and that they are available to all classes of purchasers. Therefore, if the cited registration has a broad identification of goods or services, an applicant does not avoid likelihood of

confusion merely by more narrowly identifying its related goods. *See Int'l Paper Co. v. Valley Paper Co.*, 468 F.2d 937, 938, 175 U.S.P.Q. 704, 705 (CCPA 1972) (when the goods specified in the Opposer's registration are broad enough to cover the goods in the application, "the legal effect of this fact is that the goods and channels of trade are to be considered the same for the purposes of [the] opposition."); *CTS Corp v. Cranstoms Mfg., Inc.*, 515 F.2d 780, 782, 185 USPQ 773, 774 (CCPA 1975) (the identification of the goods in the application are construed in the manner most favorable to the opposer).

At the very least, Applicant's identified "jewelry" and Opposer's identified "jewelry" are, for purposes of the likelihood of confusion analysis, legally identical. *American Lebanese Syrian Associated Charities Inc.*, 101 USPQ2d at 1028. Moreover, Applicant's "Bracelets; Charms; Costume jewelry; Necklaces; Precious and semi-precious crystal stones and beads" are all encompassed by Opposer's identified "jewelry." *Int'l Paper Co.*, 468 F.2d at 938, 175 USPQ at 705.

Accordingly, the identity between the parties' goods weighs in favor of a likelihood of confusion.

3. The Parties' Channels of Trade and Classes of Purchasers Overlap

Because the goods described in the application and Opposer's registration are legally identical, the Board presumes that the channels of trade and classes of purchasers are the same. *See American Lebanese Syrian Associated Charities Inc.*, 101 USPQ2d at 1028; *In re Smith and Mehaffey*, 31 USPQ2d 1531, 1532 (TTAB 1994) ("Because the goods are legally identical, they must be presumed to travel in the same channels of trade, and be sold to the same class of purchasers."); *In re Viterro Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (even though there was no evidence regarding channels of trade and classes of consumers, the Board was entitled to rely on this legal presumption in determining likelihood of confusion); *Centraz*

Industries Inc. v. Spartan Chemical Company, Inc., 77 USPQ2d 1698 (TTAB 2006) (“In the absence of any limitations in the parties’ identifications of goods, we must presume that the goods move through all reasonable trade channels for such goods to all usual classes of consumers for such goods.”).

In addition to that presumption, the identity of the parties’ trade channels and consumer classes in this case is also evident when one examines how and where the goods are actually marketed and sold; the normal channels of trade and class of purchasers for Opposer’s and Applicant’s products overlap. The evidence of record shows that Opposer and Applicant market and promote their SPLASHES & SPARKLES® and SPARKLE LIFE branded products in the same or similar channels, i.e., trade shows, consumer catalogs, trade publications and company catalogs. *See generally* Section IV, D, *supra*.

Moreover, Opposer and Applicant promote and sell their goods to the same or similar customer class, i.e., retail accounts. (*Id.*) In fact, Opposer and Applicant have promoted and offered their jewelry products for sale at the same trade shows to the same customers. (*Id.*)

Accordingly, the identity between the parties’ trade channels and classes of consumer weighs in favor of a likelihood of confusion.

4. The Parties’ Goods Are Relatively Inexpensive Items Purchased by Ordinary Consumers

Purchasers of relatively inexpensive, everyday goods do not give much care or thought to such purchases and are thus more likely to be confused. 4 J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition § 23:95 (4th ed.); *see also* *Lever Bros. Co. v. Am. Bakeries Co.*, 693 F.2d 251, 259 (2d Cir. 1982); *Specialty Brands, Inc. v. Coffee Bean Distributors, Inc.*, 748 F.2d 669, 672 (Fed. Cir. 1984). “[T]he purchasers of at least costume items of jewelry are ordinary members of the general public. Considering that this type of jewelry, as applicant

points out, is relatively inexpensive, it is therefore likely to be purchased casually and on impulse, thus increasing the risk of confusion.” *In Re Thomas*, 79 USPQ2d 1021, 1023 (TTAB 2006) (citation omitted).

Applicant’s goods are relatively inexpensive items, priced on average at about \$10 to \$15 each. (Docket No 30, Exhibit 2 at Exhibits 1 and 11.) Opposer’s jewelry typically sells for around \$5 to \$10 each. (Kincaid Dec., Exhibit 1.) Thus, the relevant goods in this case are goods that are purchased by ordinary consumers who will exercise no more than ordinary care in making their purchasing decisions. *In Re Thomas*, 79 USPQ2d at 1023.

Accordingly, the low level of care paid by ordinary consumers of the parties’ similar, relatively inexpensive goods weighs in favor of a likelihood of confusion.

5. Opposer’s SPLASHES & SPARKLES® Mark is Strong

“A strong mark ... casts a long shadow which competitors must avoid.” *Kenner Parker Toys Inc. v. Rose Arts Industries, Inc.*, 963 F.2d 350, 22 USPQ2d 1453, 1456 (Fed. Cir. 1992) (“When an opposer’s trademark is a strong, famous mark, it can never be ‘of little consequence.’”) (quoting *Specialty Brands*, 748 F.2d 669, 223 USPQ at 1282. The strength of a mark is based on both its inherent nature and its use in the marketplace. *See Top Tobacco, L.P. v. North Atlantic Operating Co.*, 101 USPQ2d 1163, 1171-72 (TTAB 2011) (“In assessing the overall strength of Top’s CLASSIC CANADIAN mark, we consider both its inherent strength based on the nature of the mark itself and its commercial strength, based on the marketplace recognition value of the mark”). The commercial strength of a mark “may be measured indirectly, among other things, by the volume of sales and advertising expenditures of the goods traveling under the mark, and by the length of time those indicia of commercial awareness have been evident.” *Bose Corp. v. QSC Audio Products, Inc.*, 293 F.3d 1367, 63 USPQ2d 1303, 1305 (Fed. Cir. 2002).

i. Opposer's Mark is Inherently Strong

As to inherent strength, because Opposer's registered SPLASHES & SPARKLES® mark has become incontestable and it is not subject to a counterclaim for cancellation, the registration is entitled to the conclusive effect accorded by 15 U.S.C. § 1115(b) (i.e., conclusive evidence of the validity of the registered mark and of the registration of the mark, of the ownership of the mark, and of the owner's exclusive right to use the registered mark in commerce on or in connection with the goods or services specified in the registration). Thus, Opposer's SPLASHES & SPARKLES® mark is no longer subject to challenge on the basis of descriptiveness under 15 U.S.C. § 1052(e). 15 U.S.C. § 1064(3); *see also American Lebanese Syrian Assoc. Charities Inc.*, 101 USPQ2d at 1028. The mark is inherently strong as a matter of law.

ii. Opposer's Mark is Commercially Strong

As to commercial strength, Opposer's SPLASHES & SPARKLES® mark has been strengthened through longstanding use in the relevant market. Opposer has introduced undisputed testimony regarding the history and promotion of its goods in connection with the SPLASHES & SPARKLES® mark. *See generally* Section IV, B, *supra*. As detailed above, Opposer has sold approximately \$6,500,000.00 of its SPLASHES & SPARKLES® branded jewelry products over the past five years. (*Id.*) Opposer has spent approximately \$530,000.00 over that time in promotions and advertising. (*Id.*) Opposer advertises and promotes its SPLASHES & SPARKLES® branded products across a broad spectrum of media, through its sales support and through its over 100 independent sales representatives. (*Id.*) As a result of Opposer's promotion, advertising, sales and the quality of product, the SPLASHES & SPARKLES® mark has become established in the retail market and Opposer has developed

considerable goodwill in the mark. (*Id.*) To protect that goodwill and the strength of its mark, Opposer polices against the use of marks for jewelry that are confusingly similar to its SPLASHES & SPARKLES® trademark. *See generally* Section IV, E, *supra*.

Applicant has introduced various third-party registrations containing the term SPARKLE or SPLASH in connection with jewelry in an attempt to show that Opposer's SPLASHES & SPARKLES® mark is commercially weak and the extent of third-party usage of similar marks on similar goods. (Docket No 35, Exhibits B1 to B19.) However, these do not demonstrate that Opposer's mark is commercially weak or evidence third-party use. The third-party registrations are not evidence that those marks have been used at all, let alone used so extensively that consumers have become familiar with them. Absent evidence of actual use, Applicant's third-party registrations have no probative value. *See e.g., Miss Universe L.P., LLLP v. Community Marketing, Inc.*, 82 USPQ2d 1562, 1569 (TTAB 2007) (“[T]hird-party registrations are of little material significance in determining likelihood of confusion since the existence of these registrations is not evidence of what happens in the marketplace or of the fact that consumers are familiar with them.”) (quotation marks omitted); *Sports Authority Michigan, Inc. v. PC Authority Inc.*, 63 USPQ2d 1782, 1798 (TTAB 2002) (“It is well settled that third-party registrations are not evidence of use of the marks shown therein, or that consumers have been exposed to them.”); *Lilly Pulitzer, Inc. v. Lilli Ann Corp.*, 376 F.2d 324, 153 USPQ 406, 407 (CCPA 1967) (“[T]he existence of these registrations is not evidence of what happens in the marketplace or that customers are familiar with their use.”); *Smith Bros. Mfg. Co. v. Stone Mfg. Co.*, 476 F.2d 1004, 1005, 177 USPQ 462, 463 (CCPA 1973) (“[I]n the absence of any evidence showing the *extent of use* of any of such marks or whether any of them are now in *use*, [third-party registrations]

provide no basis for saying that the marks so registered have had, or may have, any effect at all on the public mind so as to have a bearing on likelihood of confusion.”) (emphasis in original).

Moreover, if Applicant introduced these third-party registrations in an effort to show that other allegedly similar marks already co-exist on the Principal Register, “the inclusion on the register of confusingly similar marks cannot aid an applicant to register another mark which is likely to cause confusion.” *Miss Universe L.P., LLLP*, 82 USPQ2d at 1569.

In addition to the third-party registrations, Applicant also submitted what it characterizes as printouts of third-party web pages purporting to have “descriptive and/or trademark use of the term SPARKLE in conjunction with jewelry.” (Docket No 34, Exhibits A1 to A40.) Applicant’s website evidence is also of no probative value and is, therefore, irrelevant.

First, the printouts provide no indication as to the volume of sales for any of the product items or the level of exposure to the relevant purchasing public.³ *Rocket Trademarks Pty Ltd. v. Phard S.p.A.*, 98 USPQ2d 1066, 1072 (TTAB 2011) (citing *Penguin Books Ltd. v. Eberhard*, 48 USPQ2d 1280, 1284 n.5 (TTAB 1998) (white pages listings do not show that the public is aware of the companies)); *see also Black & Decker Corp. v. Emerson Electric Co.*, 84 USPQ2d 1482, 1495 (TTAB 2007) (web page evidence of third-party use introduced by applicant did not prove that the opposer’s mark was weak and in common use by third-parties); *Sports Authority Michigan, Inc.*, 63 USPQ2d at 1798 (web sites and directory listings give no indication as to actual sales, when the mark was adopted, or customer familiarity with the marks); 3 J. Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition* § 20:126.50 (4th ed.) (“Web page evidence of third party use of similar marks ... does not enable the Board to determine whether

³ Applicant’s printouts from websites purporting to show “descriptive and/or trademark use” of the term SPARKLE are inadmissible hearsay if used to show sales of products under that term. *See* TBMP 704.08(b) (“[Internet document] can be used to demonstrate what the documents show on their face; however, documents obtained through the Internet may not be used to demonstrate the truth of what has been printed.”)

the third party goods shown in the Web pages were actually for sale or the extent or manner of their sale. Such Internet evidence should be supplemented by evidence of the manner of actual sale of the goods of those third-parties.”). The extent of third-party use and the impact on the purchasing public must be established by competent evidence; Applicant offered none.

Second, the printouts are limited to a single day (March 14, 2014) and no other time period; they do not indicate the length of time of any third-party SPARKLE usage. *Rocket Trademarks Pty Ltd.*, 98 USPQ2d at 1072; *see also Gravel Cologne, Inc. v. Lawrence Palmer, Inc.*, 469 F.2d 1397, 176 USPQ 123, 123 (CCPA 1972) (advertisement from newspaper only showed promotion of the product on the day the publication issued); *Volkswagenwerk Aktiengesellschaft v. Ridewell Corp.*, 201 USPQ 410 (TTAB 1979) (advertisement submitted with notice of reliance only showed that advertisement appeared on that date in that journal and does not show customer familiarity with marks nor actual sales); *Otis Elevator Co. v. Echlin Manufacturing Co.*, 187 USPQ 310, 312 n.4 (TTAB 1975) (magazine article showed only that the goods under the mark were the subject of the article in that publication).

Third, Applicant offered no testimony as to the methodology by which it obtained these website printouts (e.g. identity of searcher; Internet search terms used; search term results). Nor did Applicant offer the actual results of its undefined Internet search. As a result, there is no way to determine the prevalence of Opposer’s SPLASHES & SPARKLES® mark in whatever Internet search Applicant performed. There is also no way to determine the search rank for any of Applicant’s proffered third-party websites (that is, how far deep into the search result any given third-party website was located). Absent that evidence, the printouts in and of themselves do not gauge the strength of Opposer’s mark. They are, therefore, of no probative value.

Accordingly, the record supports a finding that Opposer's SPLASHES & SPARKLES® mark is strong and is entitled to a broad scope of protection, and that weighs in favor of a likelihood of confusion.

6. Opposer's Survey Expert Corroborates That Applicant's Mark is Likely to Cause Consumer Confusion

Evidence of likelihood of confusion is often advanced through the testimony of market research experts that have conducted surveys of the relevant consumer. *See Helene Curtis Indus. Inc.*, 13 U.S.P.Q.2d 1618 (TTAB 1989) ("Surveys are statistical evidence that can be an aid to the Board."); *THOIP v. Walt Disney Co.*, 690 F. Supp. 2d 218, 230 (S.D.N.Y. 2010) (citation omitted). The level of confusion found to support a determination of likely confusion varies from case to case. Whatever the survey results, they must be weighed based on their probative value and in the context of the totality of the evidence in conjunction with the various *DuPont* factors. *See Miles Laboratories Inc. v. Naturally Vitamin Supplements Inc.*, 1 USPQ2d 1445, 1457 (TTAB 1986) (survey results may be corroborative of likelihood of confusion holdings).

In this case, Opposer's likelihood of confusion expert, Dr. Fong, conducted a consumer survey for the SPARKLE LIFE mark for use in connection with jewelry. Dr. Fong's survey corroborates what the other evidence of record already demonstrates—that confusion is likely.

Dr. Fong designed and conducted an Internet survey involving questions of pre-screened respondents from the relevant universe (i.e., purchasers of jewelry at the appropriate price points in the appropriate channels) across the United States. (Fong Report at 5-7.) Dr. Fong's survey followed a "strict experimental design," whereby the only difference between the two conditions of the survey was the jewelry brand name compared with SPLASHES & SPARKLES. (*Id.* at 6.)

The main survey began with a photograph of a pair of SPLASHES & SPARKLES® brand earrings on a hangtag that is introduced as a piece of jewelry that may be found in a store

or online. (*Id.* at D-6.) The respondents were asked, “Have you ever seen this brand of jewelry before (in person or in an advertisement)?”

Next, Dr. Fong’s survey presented respondents with a second image, and advised them that the second image “shows a different piece of jewelry.” For the test group, the next image depicted a photograph of pearl earrings that bear Applicant’s mark, SPARKLE LIFE, and the respondents were asked whether the same or a different company from the company in the first image shown “puts out” the jewelry, or whether the respondent is unsure. (Fong Report at D-7.) Dr. Fong randomized the order of these responses. (Fong Report at 10.) The control group was presented with the same “different piece of jewelry” orienting statement and the same “puts out” question as the test group. The photograph of the control depicted the same earrings in the same box as the photograph of Applicant’s mark shown to the test group; the only difference is the brand of the control, “SHIMMER LIFE.”

Dr. Fong’s survey respondents in both the test and control groups that responded that they believed the jewelry in each image is put out by the same company were then asked an open-ended question to explain their position as fully as possible. (Fong Report at D-9.) Respondents who answered that they did not believe the jewelry in each image is put out by the same company, or were unsure, were asked a follow-up question. The test group in Dr. Fong’s survey was then shown the SPARKLE LIFE branded earrings and asked whether the image is affiliated or connected with the company that put out the jewelry in the prior question. (E.g., SPARKLE LIFE v. SPARKLE LIFE.) The control group was asked the identical question with respect to SHIMMER LIFE. (E.g., SHIMMER LIFE v. SHIMMER LIFE.)

Dr. Fong’s survey respondents in both the test and control groups who responded affirmatively concerning an affiliation or connection between the brands were then asked another

open-ended question to explain their rationale “as completely as possible.” (Fong Report at D-11.)

Based on the survey results, after applying standard statistical theory, Dr. Fong concluded that “[t]he results show the net confusion (meaning those who thought SPLASHES & SPARKLES and SPARKLE LIFE were put out by the same company or one that was affiliated, compared with those who thought SPLASHES & SPARKLES and [the control] SHIMMER LIFE were put out by the same or an affiliated company) to be ... 16.5%, which is highly statistically significant.” (*Id.* at 15.) According to Dr. Fong, “the net confusion of 16.5% must be attributed to the product names, because SPARKLE LIFE and SHIMMER LIFE was the only difference between the two conditions.” (*Id.*)

In understanding the relevance of a particular percentage, courts and the Board find likelihood of confusion when a “substantial” or “appreciable” number of consumers are likely to be confused. In analyzing percentage numbers then, courts will extrapolate a percentage to the actual number of potentially confused consumers. In any case, 16.5% represents a substantial number of potential consumers. *See Grotian, Helfferich, Schulz, Th. Steinweg Nachf. v. Steinway & Sons*, 365 F. Supp. 707, 716 (S.D.N.Y. 1973), modified, 523 F.2d 1331 (2d Cir. 1975) (survey report indicating only 8.5 percent of respondents to be confused was considered to support a finding of likelihood of confusion.); *James Burrough, Ltd. v. Sign of Beefeater, Inc.*, 540 F.2d 266 (7th Cir. 1976) (“We cannot agree that 15% is ‘small.’ Though the percentage of likely confusion required may vary from case to case, we cannot consider 15 percent, in the context of this case, involving the entire restaurant-going community, to be de minimis.”); *Humble Oil & Refining Co. v. American Oil Co.*, 405 F.2d 803, 160 USPQ 289, 299 (8th Cir. 1969), cert. denied, 395 U.S. 905 (1969) (“Despite all this, the surveys, singly and as a group, do not dispel

the existence of a percentage of confusion which we may not dismiss as de minimis. The percentage figure varies from 11% to as high as 49%. The lower figure itself is not an insignificant percentage. The record discloses that the number of motorists in the Midwest is in the millions. Eleven percent of a figure in the millions is a large number.”)

In addition to the survey results, Dr. Fong noted that when asked to explain their reasons why they thought SPLASHES & SPARKLES and SPARKLE LIFE were put out by the same or an affiliated company, 45.6% of respondents pointed to the use of the name SPARKLE in each mark. (*Id.* at 18.) Dr. Fong highlighted some specific examples of reasons given in his report:

- “BECAUSE SPARKLE IS IN THE NAME OF BOTH OF THEM.”
- “[I] see the word sparkle in the brand so [I] assume it is a branch of the same company.”
- “[B]oth had sparkle in their names – [I’d] assume same company, but different quality levels, perhaps one brand at [W]almart, the other a [K]ohl’s or similar.”

Dr. Fong explained that “[t]he pattern of the open-ended reasons reinforce the conclusion from the experimental results in the importance of the overlap of the name SPARKLE as being a dominant factor for why respondents from the relevant universe believed that SPLASHES & SPARKLES and SPARKLE LIFE either come from the same source or are affiliated.” (*Id.* at 19.)

In sum, Dr. Fong concluded that “there exists a likelihood of confusion between the parties’ marks due to the similarity of the names SPLASHES & SPARKLES and SPARKLE LIFE as brands of jewelry.” (*Id.* at 19.) Accordingly, Dr. Fong’s survey results corroborate Opposer’s *DuPont* analysis.

7. Any Doubt Must be Resolved in Opposer's Favor

Any doubt as to the likelihood of confusion must be resolved against the “newcomer.” *In re Shell Oil Co.*, 26 USPQ2d at 1691; *Century 21 Real Estate Corp.*, 970 F.2d at 878. This is because the newcomer has the opportunity of avoiding confusion and is charged with the obligation to do so. *Burroughs Wellcome Co. v. Warner-Lambert Co.*, 203 USPQ 201, 210 (TTAB 1979) (“[A]ny doubt as to the issue of likelihood of confusion must necessarily be resolved against applicant, the newcomer, who had “. . . a legal duty to select a mark which is totally dissimilar to trademarks already being used in the field.”) (citation and quotation marks omitted); *In re Shell Oil Co.*, 26 USPQ at 1691.

Opposer's SPLASHES & SPARKLES® trademark registration and use of the SPLASHES & SPARKLES® mark dates back to September, 2004. Applicant's filing date for the SPARKLE LIFE application was in June, 2011, and Applicant claims a date of first use in July, 2010. Applicant is the junior user. Applicant could have adopted a mark that was not confusingly similar to Opposer's SPLASHES & SPARKLES® mark for directly competitive goods. It did not, and any doubt regarding the likelihood of confusion should be resolved against Applicant.

VII. CONCLUSION

The relevant *DuPont* factors indicate that confusion is likely. The parties' marks are confusingly similar. The parties' goods, trade channels and consumers are legally identical. Furthermore, Opposer's mark is strong for jewelry; it is entitled to a broad scope of protection. Opposer's survey confirms the likelihood of confusion between the marks as brands of jewelry. As the junior user, Applicant had a legal duty to select a mark which is totally dissimilar to trademarks already being used. Accordingly, Opposer has proven its claims of likelihood of

confusion as to the applied-for mark; the Board should sustain the Opposition and refuse registration of Application Serial No. 85356064.

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Dated: June 27, 2014

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing has been served on counsel to Sparkle Life LLC by sending said copy on June 27, 2014 via electronic mail and First Class Mail, postage prepaid to:

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